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HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1095th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 22 October 1991, at 3 p.m.

Chairman: Mr. POCAR
later: Mr. DIMITRIJEVIC

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (continued) (CCPR/C/42/Add.10; M/CCPR/90/39/Rev.1)

1. The CHAIRMAN invited the Moroccan delegation to reply to the questions in section VIII of the list of issues, which were as follows:

"VIII. Right to a fair trial (arts. 14 and 16)

(a) What is the relationship between Chapters VI, VII and X of the Constitution? How is the independence and impartiality of the judiciary ensured?

(b) What are the qualifications of judges and procedures for appointing members of the judiciary?

(c) What is the procedure for the removal of judges?

(d) Please provide information concerning the organization and functioning of the Moroccan Bar and on the availability of legal assistance to criminal defendants.

(e) With reference to paragraph 64 of the report, please clarify the dispositions relating to 'rules of civil law deriving from different religious faiths' contained in Dahir No. 1-58-250 of 6 September 1958."

2. Mr. ATMANI (Morocco), replying first of all to question (a) in section VIII, explained that Chapter VI of the Moroccan Constitution set forth the democratic principle of the separation of the judicial, legislative and executive branches, the judicial branch being independent and impartial and affording all the requisite guarantees to strengthen a State governed by the rule of law.

3. Chapter X of the Constitution instituted a Constitutional Chamber within the Supreme Court to decide on any disagreement between Parliament and the Government concerning the legislative or regulatory nature of legal norms. Thus the Constitutional Chamber verified the constitutionality of the laws and legality in the relations between the Legislature and the Executive. Furthermore, Chapter VII provided for the establishment of a High Court as a special court with jurisdiction to try members of the Government criminally responsible for offences committed in the performance of their duties. All the guarantees for a fair trial were provided for in proceedings in the High Court, despite its special nature.

4. With regard to the independence of the Judiciary in Morocco, by law the Kingdom's Judiciary formed a single body comprising the judges and government prosecutors of the various courts, in conformity with the Dahir of 11 November 1974. Judges, and government prosecutors were appointed on the proposal of the Supreme Council of the Magistrature, a constitutional body

instituted under article 84 of the Constitution, from among the judicial assistants who had attended a course of study at the National Institute of Judicial Studies and had then completed a 15-month period of practical training in courts of appeal and courts of first instance. Since the reform of the administrative tribunals, the National Institute of Judicial Studies now had two kinds of courses, judicial and administrative.

5. As to question (c), judges were removed on the strength of an opinion given by the Supreme Council of the Magistrature, an independent body whose role was more than advisory. It was presided over by His Majesty the King in person, in accordance with article 33 of the Constitution, and consisted of the Minister of Justice, the First President of the Supreme Court, the Attorney-General and the President of the First Chamber of the Supreme Court, as well as four representatives elected from among the members of the Judiciary, two for courts of first instance and two for courts of appeal. The independence of the Judiciary in Morocco was illustrated by the way in which judges settled the lawsuits before them impartially and in conformity with the law. Under Moroccan criminal law it was a serious offence to violate the independence and the impartiality of judges, who saw to it that the principles of equity were strictly complied with. In order to protect their interests and independence, judges were members of the National Association of Judges. Again, on account of the nature of their work, judges had an obligation to maintain the discretion and dignity inherent in their functions. Denial of justice was firmly punishable under article 240 of the Criminal Code and, at the same time, judges were protected against any threats, assaults, insults defamation or contempt of court. In that connection, under article 263 of the Code of Criminal Procedure any contempt of court was punishable by a term of imprisonment of one to two years. In addition, under article 266 of the Criminal Code public acts, words or writings intended to influence the decision of a judge or to infringe upon the authority or independence of the courts were punishable offences. Likewise, any enchroachment by the Judiciary on the legislative and the executive branches was punishable. For example, judges and officers of the judicial police who interfered with the exercise of the legislative power or with the administrative authorities could be deprived of their civic rights.

6. Imprisonment for debt was ordered for the collection of sums due to the administration by way of fines or taxes, provided that the sums involved were public monies.

7. With regard to the independence of officers of the court pursuant to the Dahir of 8 November 1979 lawyers formed part of the judicial family and exercised a liberal and independent profession as members of bar associations established at courts of first instance; the lawyers registered with each bar association formed a group with legal personality. The president of the bar association, who was elected for three years by an absolute majority of the general assembly of lawyers, represented the bar association in all civil acts. He could bring before the council of the association, sitting as a disciplinary body, infringements and faults committed by a lawyer on the roster or serving his official probationary period.

8. As far as the conditions of access to the legal profession were concerned, candidates of Moroccan nationality and candidates benefiting from the derogations provided for in international agreements who held a degree in law or an equivalent recognized qualification from a Moroccan or foreign faculty of law were admitted for practical work on presentation of an application accompanied by supporting documents. After three years they took a professional examination to qualify for the practice of law, before a committee of which half the members must be presidents or former presidents of bar associations. Persons who passed the examination were enrolled on the bar association roster after clearance. An enrolled lawyer was then qualified to represent and assist parties before the Moroccan courts and the judicial or disciplinary bodies of State administrations and public authorities and institutions, as well as professional associations.

9. In the matter of obligations, a lawyer was bound at all times to uphold the honour and dignity of his profession. He was also bound to advise his clients and assist them before the courts and administrative authorities. Furthermore, there was a system of legal aid for needy or disadvantaged persons, and the bar helped to inform the layman of his rights and duties under the law. Current legislation stipulated that any person arrested or detained in Moroccan territory was entitled to the assistance of a lawyer of his choice or of a court-appointed lawyer in accordance with article 124 of the Code of Criminal Procedure. In disciplinary proceedings against lawyers, all the necessary conditions for the strict observance of human rights were guaranteed.

10. The CHAIRMAN thanked Mr Atmani for his replies and invited members of the Committee to make their comments.

11. Mr. AGUILAR URBINA asked about the implementation of article 291 of the Code of Criminal Procedure. In particular he wished to know whether the fact that police reports were considered to be right until they were proved wrong was in conformity with the provisions of article 14 of the Covenant and what facilities were available to accused persons to enable them to denounce such reports. He also asked why articles 76 to 81 of the Constitution did not provide for specific guarantees of due process.

12. Again, what cases were dealt with by military courts, were confessions made to the police often used to convict accused persons, and how was the defence of individuals guaranteed in "collective" trials? Lastly, he wondered whether the independence of the Judiciary was effectively guaranteed, since the Supreme Council of the Magistrature was presided over by the King, who was also the head of the executive and legislative branches.

13. Mr. DIMITRIJEVIC said he welcomed the continuation of the dialogue with Morocco. The State party's reports contained a great deal of useful information, but he would like further details on how the principle of a fair trial was implemented in practice. The prosecution seemed to be always in a better position than the accused and counsel for the defence, the police reports seemed to have considerable weight - a situation that appeared to be unjustified. Likewise, it seemed that courts had a tendency to base their findings on confessions by the accused, without really trying to find out whether the confession had been obtained with threats or under duress and

without calling for an inquiry, a medical examination or other evidence. The Moroccan delegation could perhaps give some extra information on the practice followed by the courts in that respect.

14. Morocco's report showed that repect for the right set forth in article 14, paragraph 3 (b), of the Covenant was not fully guaranteed in procedure, in that the preparation of the defence was summary in the extreme and some accused persons experienced difficulties in obtaining the services of a lawyer. What was the real situation and, in particular, did all accused persons, without distinction, have the benefit of legal aid if they applied for it.

15. The Criminal Code apparently stipulated extremely variable penalties for the same type of offence; for example, penalties of six months' and of 15 years' imprisonment had been imposed for the same offence, a breach of public order. Was that a political matter and was there a higher authority in a position to influence court decisions as to the length of the sentences imposed?

16. Mr. FODOR, referring to section VIII paragraph (e), of the list of issues, said it was his understanding that different laws were applicable in Morocco, depending on the religious faith of the individual. He wondered whether, in such circumstances, the principle of equality before the law was fully guaranteed, and also what effect a change of faith would have on the application of the law to the person concerned.

17. Mr. MAVROMMATIS requested further information on the guarantees of the independence of the Judiciary. Judges of the Supreme Court were appointed by the Head of State who was also President of the Supreme Council of the Magistrature something that raised certain doubts as to whether the Judiciary really was independent of the Executive. Furthermore he wondered whether the principle of the irremovability of judges really was respected and whether any judges had already been removed from their posts for serious offences.

18. Mr. SADI noted that, under Moroccan law, trials were held in public unless a public trial might be prejudicial to public order or morality. In that connection, he wondered what the Moroccan authorities understood by "morality". He would also like to be informed of the number of trials which had thus taken place in camera for reasons of morality. Furthermore, the Moroccan delegation might perhaps clarify whether it was true, as seemed to be indicated in the initial report, that the accused could contact his lawyer and members of his family only after appearing before the court for the first time.

19. Mr. EL SHAFEI noted that the Moroccan Constitution guaranteed the equality of all citizens before the law and allowed penalties to be imposed only in accordance with the procedures provided for by law. Nevertheless, it seemed that presumption of innocence was not a clearly established principle in Moroccan law, a situation that appeared to be particularly disturbing in view of the length of pre-trial detention periods and, sometimes, the harsh conditions of detention. Did not the Moroccan delegation consider that such practices were contrary to the principles set out in article 14 of the Covenant?

20. Mr. ATMANI (Morocco) first explained for Mr. Aguilar Urbina that, under articles 291-293 of the Code of Criminal Procedure, the records drawn up by the judicial police were considered to be true until the contrary was proved. The author of the record must report in it what he had seen and heard in person. The correspondence exchanged between the prisoner and his counsel was not considered to be written evidence.

21. Of the two kinds of criminal procedure, the accusatorial and the inquisitorial, Morocco had chosen the second. Since the preliminary investigation was non-substantive, if the records were false, it was for the accused to demonstrate the fact in order to prove his innocence. It should also be pointed out that the Constitution was neither a criminal code nor a code of criminal procedure. It regulated relations between the Executive, the Legislature and the Judiciary. The jurisdiction of military courts was limited to questions concerning State security or the possession of weapons. Military courts abided by the provisions of the Criminal Code and the Code of Criminal Procedure as applied in ordinary law.

22. Furthermore, the Supreme Council of the Magistrature was a constitutional organ. It was presided over by the King, but in principle only at its opening meetings, at which the Judiciary submitted any complaints. The Supreme Council consisted of seven members of the Judiciary - namely, the First President of the Supreme Court, the Attorney-General at the Supreme Court, the President of the First Chamber of the Supreme Court, and four other elected members of the Judiciary. The Minister of Justice, as Vice-President of the Council, did not play a part in the decisions taken by agreement of the members of the Judiciary, on matters concerning promotion or disciplinary measures.

23. As to Mr. Dimitrijevic's first question, in criminal proceedings confessions were not enough: they had to be supplemented by evidence, testimony and comparison at the trial, except when they had been reiterated by the person concerned before the examining magistrate. If the confessions had been obtained under duress, the prisoner must prove it. In any case, however, confessions made before the judicial police must be corroborated by confessions made before the examining magistrate, at which level there could obviously be no duress.

24. In criminal cases, an appeal against judgements handed down by a court of first instance lay with the Criminal Appeal Division and then with the Court of Cassation. Judgements in criminal cases handed down by the Criminal Chamber of the Court of Appeal, which had replaced the former Court of Assize, could be appealed in the Court of Cassation. However, any judgement by the Criminal Chamber of the Court of Appeal must have been preceded by an obligatory investigation supervised by the Criminal Appeal Division. He advised international organizations that were sometimes faced with incorrect information in that connection to apply to the Ministry of Justice for access to the relevant files.

25. As to Mr. Fodor's question, religious beliefs gave rise to distinctions in law only in so far as personal status and inheritance were concerned. For example, the family status of Muslims was governed by Muslim law, that of Jews by Jewish law, and that of aliens by their respective national laws. The

civil status of aliens in Morocco was regulated by the Act of 12 August 1913. The same principle applied in matters of inheritance, in accordance with a time-honoured tradition. In all other matters, however, the same law was applied to everyone in all areas, whether it was criminal, commercial, social or property law. In accordance with the Islamic principle of tolerance, which had already been applied in the time of the Prophet, Jews in Morocco had their own rabbinical judges and their own notaries. Also, the Minister of Justice had a counsellor for Jewish affairs who dealt with family and inheritance problems and was sometimes called upon to give advice to aliens.

26. In reply to the comments made by Mr. Mavrommatis, he explained that the independence of the Judiciary was established by the Moroccan Constitution. Like all senior judges and senior civil servants in Morocco, the First President of the Supreme Court was appointed by the King. Judges were irremovable. Their retirement age was fixed at 60, with a possible two-year extension that could be renewed three times. When disciplinary proceedings were brought against judges, a report on the acts in question was drawn up either by the immediate superiors of those concerned or by the judicial police, depending on the circumstances of the case. The report was forwarded to the Minister of Justice, who transmitted it to the Supreme Council of the Magistrature. The individual concerned was informed of the contents of the report and was assisted in his defence by counsel. After hearing the pleas of the person concerned, the Supreme Council of the Magistrature could take disciplinary action of greater or lesser severity. For instance, by means of a warning or a reprimand.

27. In regard to Mr. Sadi's questions, court hearings were public unless there were disturbances during a hearing or there was a danger of a threat to public order or to morality, as could happen in cases involving children or family privacy. In those circumstances, the case was heard in camera. There was no record of the number of cases heard in camera, but every judgement must state whether it had been handed down in public or in camera. As from the initial questioning for the purpose of identification, the accused could refuse to make a statement without the presence of his lawyer and could wait until the second questioning before stating his case.

28. Lastly, with regard to the presumption of innocence mentioned by Mr. El Shafei, Morocco adhered to a legal system which did not depart from established practice either in the preliminary investigation or in the judgement. Consequently, there really was a presumption of innocence stemming from the interpretation given to the Criminal Code and the Code of Criminal Procedure, even though the principle was not specifically set forth in those Codes or in the codes on which they had been based.

29. Mr. MULLERSON asked how placing the burden of proof on the accused, as had just been indicated, could be considered compatible with the provisions of article 14, paragraph 2, of the Covenant.

30. Mrs. CHANET pointed out that, although the principle of the presumption of innocence was not included in the French Code of Criminal Procedure, that was because it was established in the Declaration of the Rights of Man and of the Citizen incorporated in the French Constitution and was therefore a constitutional principle. She would like to know whether any disciplinary

or criminal proceedings had been brought against members of the Judiciary for having ordered arbitrary detentions, for example. If so, had there been an investigation in respect of them and what had been the outcome?

31. Mr. PRADO VALLEJO said that he would like the Moroccan delegation to confirm whether there were or were not military or special courts for trying persons charged with a breach of public order. The principle of the presumption of innocence was also a matter of concern for all members of the Committee, particularly since judicial proceedings in Morocco were sometimes extremely long and prisoners could remain for a long time in prison without trial. It was clear that, in any country where the principle of the presumption of innocence did not exist, arbitrariness could prevail. From his point of view, the replies to those questions were essential if the Committee was to have a sounder idea of the way in which Morocco was implementing the provisions of the Covenant.

32. Mr. ATMANI (Morocco) said it seemed that Mrs. Chanet was referring to a recent case involving a lawyer, Mr. Kenfaoui. In that particular case, since the judicial police had interfered in the preliminary investigation, the whole proceedings had been annulled and the prosecution had been stopped; the rule requiring that members of the Judiciary be tried before a court of an appropriate level had not been respected. The lawyer in question was currently practising in another town in Morocco.

33. There were military courts in all countries, either permanently or in wartime. The investigation of cases within the jurisdiction of such courts was assigned to military judges reporting to the national defence services, but the courts themselves were presided over by judges from the Ministry of Justice. The rank of the military personnel being prosecuted was taken into consideration in determining the appropriate court. Military courts tried cases where there had been a breach of State security, possession of weapons or infractions by members of the armed forces themselves.

34. Presumption of innocence was a general principle arising out of the case-law of the courts. Under article 10 of the Constitution, nobody could be arrested, detained or punished except in the cases and in the manner provided for by law. Consequently, that provision guaranteed presumption of innocence, even if it was not expressly included in the Criminal Code and the Code of Criminal Procedure. Moreover, as a party to international instruments such as the Covenants, Morocco endorsed all of the principles set out in them, since international instruments took precedence over domestic law.

35. The CHAIRMAN announced that the Committee had concluded its consideration of section VIII of the list of issues for Morocco's second periodic report. He suggested that the Moroccan delegation should reply to the questions put in section IX of the list, which read as follows:

> "IX. Freedom of movement and expulsion of aliens (arts. 12 and 13)
>
> Please describe the procedures leading to expulsion in conformity with articles 3 and 12 of the Dahir of 15 November 1934. Does an appeal against an expulsion order have suspensive effect?"

36. Mr. SERGHINI (Morocco) said that questions relating to the freedom of movement and the expulsion of aliens were governed by articles 3 and 12 of the Dahir of 15 November 1934, as amended and supplemented. Paragraph 1 of article 12 of the Dahir, which had been amended in 1951, provided more specifically that aliens who had entered Morocco unlawfully or who broke the law or practised a profession in a region other than the one in which they had been authorized to do so would be expelled by an order issued by the regional authorities of the place of entry or of residence. An application for a discretionary remedy against the expulsion order could be made. If the application was rejected, the person concerned could apply to the Administrative Chamber of the Supreme Court for an annulment on the ground of illegality. However, the application did not have suspensive effect.

37. The movements of aliens who entered or lived in Morocco in due and proper form were not subject to any administrative formality, except in the case of those who were gainfully employed and, in particular, persons practising a liberal profession, who needed the prior approval of the administrative authorities. The same conditions were required of nationals who practised a liberal profession, the purpose being, of course, to protect the professions concerned.

38. Mr. HERNDL noted that the question of freedom of movement and the expulsion of aliens had already been dealt with in detail in Morocco's initial report (document CCPR/C/10/Add.2), but no mention had been made in that report of the possibility of applying for an annulment to the Administrative Chamber of the Supreme Court. In that connection one member of the Committee had also referred to the case of a lawyer who had been expelled in 24 hours without any opportunity to lodge an appeal. Since two authorities were involved in the proceedings - namely, the General Directorate of National Security and the Administrative Chamber of the Supreme Court - and since an appeal for redress did not have suspensive effect, as the representative of Morocco had just pointed out, must it be considered that decisions to expel aliens made by the General Directorate of National Security were not final inasmuch as an appeal for annulment could be lodged with the Administrative Chamber? Furthermore, what was the position with regard to expulsion orders issued by a court, to which reference had been made in the initial report? In such circumstances, was there a possibility of obtaining an effective remedy from a higher court?

39. Mrs. CHANET asked on what ground and under what procedure Abraham Serfaty had been expelled from Morocco on 13 September 1991. How could the Moroccan delegation justify that decision in the light of articles 12 and 13 of the Covenant?

40. Mr. DIMITRIJEVIC asked whether the penalty of banishment existed in Morocco. There had, in fact, been instances of forcible expulsion from Morocco not only of aliens but even of Moroccans, in breach of article 12, paragraph 4, of the Covenant. Were those cases exceptions, or was banishment a normal practice in Morocco?

41. Mr. MAVROMMATIS said it was gratifying to note, from paragraph 58 of the report, that article 12 of the Covenant, concerning freedom of movement, was being applied in Morocco. It was often through the implementation of that

right that a distinction could be made between democratic and totalitarian regimes, even if some limitations on the right were admitted. Certain allegations, however, showed that in January 1990 several hundred persons were reported to have been expelled from their place of residence, not by the Central Moroccan Government but by the local authorities in Casablanca, which had forced them to return to the desert regions from which they had originally come. They had not been prisoners, but only residents. The Moroccan delegation might wish to comment on that information.

42. Mr. FODOR asked whether a citizen with dual nationality could be expelled, since, according to the report, only aliens could be subjected to that measure. In the report only one ground for expulsion was given, unlawful residence. He would like to have a complete list of the grounds for expulsion in order to learn, in particular, whether they included political opinions.

43. Mr. AGUILAR URBINA said that the expulsion of Mr. Serfaty on 13 September 1991 immediately after his release raised matters under articles 12, 13 and 16 of the Covenant. If, as the Moroccan authorities affirmed, Mr. Serfaty had Brazilian nationality, article 13 had been breached, since he had had no possibility of appealing against the decision. If, on the contrary, and as some sources indicated, Mr. Serfaty was not Brazilian but really had Moroccan nationality, article 12 of the Covenant had been breached. The nationality of the former prisoner also posed a problem under article 16 of the Covenant, which guaranteed everyone the right to recognition everywhere as a person before the law.

44. Paragraph 59 of the report said that freedom to leave Moroccan territory was subject only to the prior obtaining of a passport and that no exit visa was required. How was it, then, that some citizens could not obtain a passport and what were the arrangements for obtaining one?

45. Mr. PRADO VALLEJO asked about the grounds justifying the particularly strict surveillance measures imposed, according to reliable sources, on aliens, and especially on Spanish-speaking aliens, visiting the Western Sahara. Every effort was made to ensure that they had no contact with the Saharans, and they were obliged to stay at the Hotel Parador at El Aaiun. It would be interesting to know the reasons for those controls and restrictions.

46. Mr. EL SHAFEI said that while some citizens had been able to obtain their travel documents quickly as a result of the decision taken by the Moroccan authorities to facilitate the issue of passports, others continued to experience great difficulty. In particular, he would like some information on the situation with regard to the freedom of movement of former prisoners sentenced for political reasons who had been released as a result of an amnesty, pardon or dismissal of proceedings.

47. Mr. WENNERGREN, pointing out that article 12, paragraph 2, of the Covenant provided for the right of everyone to leave any country, "including his own", read out an extract from a note from the Association for the Defence of Human Rights in Morocco which showed that the Oufkir family, released in March 1991, was still under close surveillance and did not have passports,

a fate which was reportedly shared by dozens of former prisoners, who were consistently subjected to intimidation and to all sorts of difficulties. The Moroccan delegation's comments on that subject would be appreciated.

48. Mrs. HIGGINS said the Moroccan delegation had indicated that the members of the Oufkir family had not been subject to any administrative restriction and that it had not been known whether they had wished to travel abroad or had received an invitation. However, from the standpoint of the State of origin, the right to leave a country did not depend on an invitation. The absence of an invitation could not constitute a ground for failing to comply with article 12, paragraph 3, of the Covenant. Since, therefore, the Moroccan citizens in question were not subject to any administrative restriction, she wished to know whether they had obtained passports.

49. Mr. SERGHINI (Morocco), replying to the specific questions about the arrangements for the expulsion of aliens, said that two traditional kinds of remedies were available against an expulsion order, one before the administrative authorities and the other before the judicial authorities. An application for a discretionary remedy could be lodged with the General Directorate of National Security, which could respond favourably to the alien's application or could reject it. If the decision to expel him was maintained, the alien could appeal against it to the administrative courts. The whole procedure ultimately ended in the Administrative Chamber of the Supreme Court.

50. As to the various questions about the nationality and expulsion of Mr. Serfaty, Moroccan law incorporated the principle of "perpetual allegiance", which meant that a Moroccan could never lose his nationality even if he acquired another one. In Mr. Serfaty's case, the legal basis for the decision to expel him was an order issued by the Ministry of the Interior, which had been made public. He read out a few extracts from the text, which showed that Mr. Serfaty's Moroccan nationality was not established. On the contrary, according to the order, Mr. Serfaty could in no way avail himself of Moroccan nationality, since he satisfied none of the conditions set out in the Dahir of 6 September 1958 because on several occasions he had signed documents attesting to his Brazilian nationality and had, in addition, submitted an application for naturalization in France, which had been rejected. Mr. Serfaty was therefore subject to the legislative provisions and regulations applicable to aliens, and that was the legal basis on which he had been expelled. He still had available to him the remedies open to an alien whose expulsion had been ordered, and he had apparently taken legal advice to that end. Consequently, no one could prejudge the decision of the Moroccan courts if the case was brought before them.

51. In Morocco, which was traditionally a welcoming and hospitable land, the the penalty of banishment obviously did not exist. Cases of expulsion were very limited, and aliens enjoyed all the requisite protection, as was shown by the large number of aliens still engaged in all kinds of activities in the public and private sectors. As for the grounds for expulsion, in Morocco, as in most countries, an alien who engaged in activities that were illegal in the host country could be expelled.

52. All Moroccan citizens could obtain a passport. In April 1991 the authorities had made arrangements to speed up the procedures for issuing a passport, but the application of those arrangements had, it was true, been hampered by material difficulties, since the department responsible for printing passports had not taken the necessary action. Any restrictions were in fact restrictions in cases where the use of a Moroccan passport might be prejudicial to State security; it was common knowledge that illegal foreign groups and terrorists availing themselves of Moroccan passports and therefore considered to be Moroccans by other countries had committed terrorist acts. There were also certain limited restrictions relating to morality. Members of the Committee had mentioned particular cases of individuals who were reported to have been refused passports, and the Moroccan authorities would be glad to have a list of the persons complaining of such treatment, since it was difficult to reply in the abstract.

53. There was absolutely no restriction on freedom of movement in the provinces of southern Morocco, as was proved by the very large number of journalists who had been there over the past 15 years. If foreigners had to stop at the Hotel Parador in El Aaiun, that was because the town had only three hotels and the Hotel Parador was the best.

54. Some members of the Committee had again taken up the case of the Oufkir family. His delegation had no information enabling it to affirm that the Oufkir family was unable to obtain a passport. It did not even know whether the Oufkir family had applied for one. All the same, it was not a matter of major concern: like all Moroccan nationals, the members of the Oufkir family could obtain a passport and, if any member of the Committee had a petition in his hands, it could be submitted to the Moroccan delegation.

55. Lastly, he requested Mr. Mavrommatis and Mr. Aguilar Urbina to be kind enough to clarify their questions.

56. Mr. Dimitrijevic took the Chair.

57. Mr. MAVROMMATIS explained that he had requested clarification of the events which, according to the Arab Oragnization for Human Rights, known to be a responsible organization, had taken place in January and December 1990. Two major campaigns of arrest had occurred and, in the course of the first, over 1,000 persons had been arrested because the Casablanca provincial authorities had wanted to send them back to the desert they had originally come from.

58. Mr. AGUILAR URBINA reiterated his concern about the conditions in which Mr. Serfaty had been expelled immediately after leaving prison. If Mr. Serfaty was Moroccan, his expulsion deprived him of the right to live in his own country, which was a violation of article 12 of the Covenant; if he was not Moroccan, there was a violation of article 13, since the traditional appeal procedures which the Moroccan representative had explained had not been applied. Moreover, the Brazilian Ambassador to Costa Rica had informed him that Mr. Serfaty had not had Brazilian nationality; in that case, what was the position with regard to his right to recognition as a person before the law, guaranteed in article 16?

59. Mr. SERGHINI (Morocco) said that he could not place the events referred to by Mr. Mavrommatis. His delegation would certainly read the document from the organization mentioned and would provide the necessary clarifications as soon as possible.

60. Mr. Serfaty's expulsion was in conformity with the Covenant, since it had been done pursuant to an order issued by the Minister of the Interior - in other words, in accordance with the law, as stipulated in article 13. The measure had also been perfectly justified, since, as was stated in the order issued by the Ministry of the Interior, the Moroccan Government was entitled to expel from its territory foreign nationals who committed serious breaches of public order or endangered the internal or external security of the State, a reason expressly provided for in article 13. Nevertheless, Mr. Serfaty still had available to him the remedies offered in Moroccan law.

61. As far as Mr. Serfaty's nationality was concerned, his own knowledge of the case enabled him to affirm that documents supplied by the Brazilian Consulate at Rabat attested to his Brazilian nationality.

62. Mrs. CHANET objected that in no country was the Minister of the Interior competent to decide on the question of an individual's nationality. Mr. Serfaty had been detained for 17 years without the authorities contesting his Moroccan nationality; the question therefore was the conditions in which Brazilian nationality had suddenly surfaced on 13 September 1991.

63. Mr. SERGHINI (Morocco) said that, in order to overcome Mrs. Chanet's objections, he would have to refer once again to the ministerial expulsion order in which it was stipulated that "If no expulsion order had been envisaged ... it was because Mr. Serfaty had misled the judicial and administrative authorities by invoking his alleged Moroccan nationality". Later on it was stated that "a recent and thorough review of the legal status" of Mr. Serfaty had shown that he could in no way lay claim to Moroccan nationality. It was therefore clear that the Ministry of the Interior had rightly done nothing more than issue an expulsion order based on an administrative dossier drawn up by the Ministry of Justice.

64. With that reply he thought that he had answered all the questions asked in respect of articles 12 and 13 of the Covenant.

65. The CHAIRMAN invited the Moroccan delegation to reply to the questions put in sections X and XI of the list of issues, which read as follows:

"X. Freedom of religion and expression (arts. 18 and 19)

(a) Please provide information concerning registration or other procedures relating to the recognition of religions or religious sects by the authorities. Have any difficulties been encountered in the foregoing regard?

(b) Is there any mechanism for censorship of the press or the media? If so, please describe the relevant regulations and procedures under which censorship is excercised.

(c) What conditions need to be fulfilled before foreign newspapers or periodicals can obtain a permit? (see para. 77 of the report)

XI. Freedom of assembly and association (arts. 21 and 22)

(a) What are the criteria and procedures for the registration of associations? (see para. 81 of the report)

(b) What is the status and role of trade unions in Moroccan economic, social and political life?"

66. Mr. BENHIMA (Morocco), replying to the questions put in section X, paragraph (a), said that Islam was the State religion which guaranteed freedom of worship to everyone, in accordance with article 6 of the Moroccan Constitution. Religions were not subject to registration formalities, but no religion had the right to try and sway the faith of Muslims or to convert people.

67. The revealed religions had traditionally recognized places of worship protected by the authorities. However, religious associations fell within the provisions of the Dahir of 15 November 1958 on the right of association and they could therefore be constituted only after making the declaration stipulated for that purpose.

68. Mr. SERGHINI (Morocco), replying to the questions put in section X, paragraphs (b) and (c), explained that Morocco recognized and guaranteed the free exercise of individual and collective rights and freedoms. Freedom of expression was established in article 9 of the Constitution. It was regulated by the Dahir of 15 November 1958 containing the Press Code, which set forth the administrative measures applicable to the publication of newspapers and periodicals. For example, the right to issue a new publication was accompanied by the obligation to make a simple declaration to the judicial authority containing information concerning such matters as the management of the publication and its financing. Moreover, the only formality imposed by the Press Code on those responsible for the publication of newspapers and periodicals was to deposit, at the time of publication, copies of the newspaper or periodical with the judicial authorities and with the Ministry of Information. Failure to observe that procedural rule led only to a token fine on the editor of the publication in question.

69. Consequently, any citizen could publish a newspaper or periodical of a political, cultural, artistic, sports or professional nature and was not subject to any form of censorship. Furthermore, the government authorities encouraged freedom of expression by granting very substantial financial and material support to the national press. He referred members of the Committee to the report (CCPR/C/42/Add.10), in which various provisions designed to promote the national press, were enumerated, including the annual grant of 20 million dirhams, the benefits granted to journalists in the exercise of their profession, and various forms of relief granted to the press. At present there were in Morocco 292 organs of the national press reflecting all political tendencies, a diversity which revealed the political and trade union pluralism of the Moroccan system. The various parties and trade unions, through their newspapers and periodicals, thus helped to guarantee and to

preserve strict respect for individual and collective rights and freedoms. Moreover, a national press union had been created in 1963 to develop the national press within a framework of democratic dialogue.

70. The printing and publication of the foreign press in Morocco were regulated by a decree. Those responsible for a foreign press organ were bound, under the Press Code, to submit an application in writing containing general information on the publication envisaged. A certain number of foreign newspapers and periodicals, particularly French and Arab, were printed and published in Morocco.

71. There was no restriction on circulating and distributing foreign newspapers and periodicals printed outside the country and 2,400 were freely distributed in Morocco.

72. In reply to the question in section XI, paragraph (a), he quoted article 9 of the Moroccan Constitution, which guaranteed to all citizens freedom of association and freedom to join the trade union and political organization of their choice. The Dahir of 15 November 1958 regulated the right of association and provided that associations of persons could be freely constituted without prior authorization, subject to a declaration made at the government prosecutor's office of the court of first instance and with the local authority. The declaration must include the name and purpose of the association, as well as particulars concerning the civil status of the founding members. Through the declaration the association acquired legal capacity. An association thus declared could go to law, acquire, possess and administer the premises and equipment it needed and administer its members' dues. The legislation on the creation of associations was none the less accompanied by measures to protect freedom of association. Under the Dahir of 1958 associations were null and void if they were founded to promote any cause or purpose that was illicit, contrary to the law or to morals, or their purpose was prejudicial to the territorial integrity of Morocco or to the monarchical form of the State. Also, any declared association could be recognized as being in the public interest by virtue of an administrative decision taken after an inquiry into its purposes and means, and could thereby enjoy broader legal capacity, including the right to receive donations. The Dahir assimilated political parties to associations; there were, however, a few differences, including the obligation to deposit a party's statutes and exclusion from the arrangements for associations deemed to be in the public interest. In Morocco, there were also a considerable number of cultural, sports and other related associations.

73. Replying to the question in section XI, paragraph (b), he said that freedom of association was a fundamental freedom, set out in article 9 of the Constitution. There were various trade unions in Morocco, and they played an important role in defending the interests of their members and actively contributed to the country's economic and social development. Under article 3 of the Constitution, trade unions played a part in securing the organization and representation of citizens. Also, article 43 of the Constitution provided that the Chamber of Representatives must include representatives of wage-earners elected by trade union organizations. In general, all those provisions enabled the trade unions to play an active part in decision-making at the national and local levels. The trade unions had also contributed to

the substantial progress made with regard to employment, social protection, vocational training and improvements in the income and working conditions of wage-earners.

74. The CHAIRMAN invited members of the Committee to comment and ask questions on sections X and XI of the list of issues.

75. Mrs. HIGGINS asked about the freedom of religion in Morocco. From paragraph 71 of the report (CCPR/C/42/Add.10), she noted that there was a fairly broad tolerance of religions of the people of the Book and she welcomed the statements by the Moroccan delegation concerning the authorities' liberal attitude to the Jewish religion. Nevertheless, she was worried about the fate of other religions, particularly Baha'ism. It was her recollection that in 1953 a judgement of the Supreme Court had recognized that profession of the Baha'i faith was not unlawful. Subsequently, some disturbing events had occurred; in particular, it was her understanding that in 1983 many Baha'is had been summoned to police stations for questioning and that a number of them had then been brought before the courts on charges of having sought to shake the faith of Muslims. They had reportedly been sentenced to terms of imprisonment, which they had served, and their appeals were said to have been rejected by the Supreme Court in 1987 and 1989. In general, certain provisions of the Penal Code made it an offence to seek to shake the faith of a Muslim, amounting essentially to a prohibition of prosyletism. It would also appear that, if a Baha'i admitted during questioning, to having tried to persuade a Muslim to convert to the Baha'i faith, that mere admission was sufficient and need not be supported by specific evidence. Meetings of Baha'is for community prayers were also reported to be considered illegal and therefore punishable by the law. She would like to have some clarification on all those points. In such circumstances, how could it be considered that freedom of religion was properly guaranteed in Morocco?

76. She would also like to know whether it was true that the Baha'i cemetery at Rabat had been closed in 1986 and whether there still was an authorized cemetery reserved for the followers of the Baha'i religion. Lastly, in a number of countries a religious marriage in a faith other than the State religion was authorized but presumably had to be accompanied by a civil marriage in order to be legalized. What was the position in Morocco? Again, must a marriage between two non-Muslims also be celebrated in accordance with the Islamic rite? More specifically, was a marriage contracted before the Baha'i religious authorities recognized by law, or did it also have to be contracted before the Islamic authorities?

77. Mr. MULLERSON inquired about freedom of opinion and expression in Morocco. Paragraphs 72 to 77 of the report (CCPR/C/42/Add.10) showed an impressive number of national and foreign publications. However, information transmitted by NGOs or press organs suggested that various provisions of the Press Code evoked articles of the Penal Code, particularly those relating to propaganda in favour of political systems other than monarchy, the circulation of erroneous information concerning the army, the system of justice, the Government or the civil service, and so on. He also noted from paragraph 76 of the report that journalists received a 50 per cent reduction on the price of hotel rooms and on telephone and telex charges. Were those privileges really evidence of the freedom of the press? Not so long ago, in certain

countries of Eastern Europe, journalists had had to be members of a party, which had prevented them from being really independent. If journalists in Morocco received financial assistance from the Government, could they be really independent?

78. He also wondered whether privileges for journalists were granted to all journalists, both Moroccan and foreign, and whether all Moroccan journalists enjoyed them, regardless of the press organ or the media that employed them.

79. Mr. FODOR said that he would like to know about the current status of the Baha'i community in Morocco. Were members of that community persecuted because of their religious beliefs? Did failure to respect any of the country's religious rules, particularly the provisions of Islamic law, constitute an offence under the Penal Code? If so, could non-Muslims be prosecuted and sentenced accordingly? And was the offence sui generis or an infraction under the provisions for the maintenance of public order?

80. Mr. MAVROMMATIS said he associated himself with the questions put by Mrs. Higgins and Mr. Fodor concerning members of the Baha'i community. Furthermore, he would like to know whether the act of transmitting, in a press organ, false or tendentious information about an event that occurred in Morocco constituted a criminal offence.

81. Mrs. HIGGINS requested further clarification about freedom of the press. The Moroccan representative had indicated that, under the Press Code, it was necessary to obtain authorization for a publication. Press criticism of the Kingdom's political or religious institutions, or of the administration also appeared to be prohibited and punishable in criminal law. Finally, it would appear that censorship, although not mentioned stricto sensu in the Press Code, had been used from time to time, particularly in the Casablanca area after the riots in 1981 and the events that had taken place at Marrakesh in 1984. In her opinion, such limitations on the freedom of the press were not in keeping with those provided for in article 19, paragraph 3, of the Covenant. What were the Moroccan delegation's views in that regard?

82. Mr. Pocar resumed the Chair.

83. Mr. AGUILAR URBINA said he welcomed the tradition of religious tolerance in Morocco, which went back to a period when, on the other side of the Straits of Gibraltar, such an attitude had been simply unthinkable. The Spanish Reconquest had also led to the expulsion and massacre of very many Jews and Muslims; it had subsequently been transformed into the conquest of Latin America and reflected in the disappearance of thousands of indigenous religions.

84. The Moroccan delegation had affirmed that freedom of religion existed in Morocco but that no faith had the right to try to convert Muslims. He would like to know precisely which religions were covered by that prohibition and which were the revealed religions according to Moroccan law. The concept was not clear, in so far as several historians of myths and religions considered that all the world's religions derived their legitimacy from the fact that they had been revealed. Lastly, what was the status of the Baha'i community in that regard?

85. Mr. ATMANI (Morocco), replying to the questions on the Baha'is, said that Islam endeavoured to perpetuate the religions which had been revealed to Moses and to Jesus Christ. Morocco, with a 99.99% Muslim population, could not allow certain elements to disturb the country's Islamic peace. The Baha'i faith was not a revealed religion. The Baha'is formed an heretical sect and the Malikite sunnis - in other words, Moroccan society as a whole - did not recognize their faith. Moreover, sects were a relatively recent phenomenon in Morocco. They proselytized. However, under article 221 of the Penal Code any act of proselytism was severely punished by the law, since it could only harm Islam. The Baha'i faith was opposed to Islam and contravened its five basic rules. Furthermore, the Baha'is represented only a tiny minority, a handful of individuals who were mostly foreigners. Baha'ism had been born at Haifa, at the time of British colonial rule, and the Moroccan Islamic regime could not tolerate attacks by religious groups in the pay of foreign countries.

86. The revealed religions could be freely and publicly practised in Morocco and enjoyed the protection of the State. The Baha'is could practise their faith in the strictest privacy, but if they did so publicly, they disturbed public order and the Moroccan legal system was therefore entitled to prosecute and to sentence them.

87. Mr. SERGHINI (Morocco), replying to Mr. Mullerson's questions about the Press Code, said that in fact article 71 of the Code provided for prosecution, before the competent court, in conformity with the procedural provisions in force, in cases of defamation of individuals and of defamation or insulting behaviour in respect of the courts, members of the Government, civil servants, police officers and so on. Such a provision was quite normal and was part of the law in many countries.

88. With regard to what Mr. Mullerson had described as the privileges granted to journalists, he would point out that aid for the press had been requested on many occasions, not by the governmental press or press organs close to government circles, but by the opposition press, which had asked the authorities to support the national press at a time when it was experiencing serious difficulties, mainly due to the liberalism and competition of the foreign press. The Moroccan press, regardless of political views, enjoyed total independence, and the authorities had no say in running newspapers and and certainly not the publications of the opposition. Moreover, some editors of press organs had publicly thanked the authorities for the assistance they were providing, but that did not prevent them from freely criticizing the Government's policy. All those facts clearly indicated that the press in Morocco was independent.

89. As to the question put by Mrs. Higgins concerning the restrictions, taxes and censorship reportedly imposed upon the press, the law and the practice in that regard were perfectly clear. The publication of periodicals was governed by a number of plainly essential legal provisions recognized in many countries which had adopted similar provisions in that respect. A certain amount of information clearly had to be supplied in order to obtain permission to publish, but new publications were appearing daily in Morocco and encountered no material obstacle; indeed, the reverse was true, since the press was encouraged by the authorities.

90. No legal provision provided for the censorship of publications and censorship did not, in fact, exist.

91. The CHAIRMAN thanked the Moroccan delegation and said that, in view of the late hour, the questions relating to sections XII to XIV of the list of issues would be taken up at the next meeting.

The meeting rose at 6.05 p.m.